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MOTION TO RETAX COSTS

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 15

PUBLIC SERVICE COMMISSION OF UTAH and UTAH CITIZENS RATE ASSOCIATION,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
THE DENVER AND RIO GRANDE WSETERN RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
UTAH RAILWAY COMPANY,
BAMBERGER RAILWAY COMPANY,
TOOELE VALLEY RAILWAY COMPANY,
SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

CALVIN L. RAMPTON
Counsel of Record for Appellants,
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Attorney General of Utah
RAYMOND W. GEE
Asst. Attorney General
KEITH SOHM
Commerce Attorney for the Utah Public Service Commission
Attorneys for Appellant, Public Service Commission of Utah

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SALT LAKE, GARFIELD AND WESTERN RAILWAY COMPANY,
THE OGDEN UNION RAILWAY AND DEPOT COMPANY,
Appellees.

MOTION TO RETAX COSTS

COME NOW the appellants in the above entitled action and move the court for an Order, re-taxing costs in the amount of $4723.03 against the appellees, The Denver and Rio Grande Western Railroad Company, Union Pacific Railroad Company, Southern Pacific Company, The Western Pacific Company, Utah Railway Company, Bamberger Railroad Company, Tooele

Valley Railway Company, Salt Lake Garfield and Western Railway Company and the Ogden Union Railway and Depot Company.

This motion is made upon the following grounds:

1. That heretofore, to-wit, on May 19, 1958 this Court rendered its decision in favor of the appellants in said action and against the appellees therein reversing the judgment of the District Court theretofore entered and remanding said cause to that court with instructions to set aside the order of the Commission and remand the cause to the Commission for further proceedings in conformity with said opinion of this Court.

2. That in proceedings in the District Court below and in the Supreme Court of the United States the parties who appeared as intervenors in the District Court, being all of the appellees in the action, except the United States of America and the Interstate Commerce Commission, were and are the true parties in interest in said action and did and do have a true and real interest in the proceedings and the outcome thereof, and did take a real and substantial part in the proceedings and in the presentation of issues on behalf of the defendants and appellees, both in the District Court and in the Supreme Court of the United States.

3. That under Rule 57, Subsection 2 of the Revised Rules of the Supreme Court of the United States, it is provided as follows:

> "2. In cases of reversal or vacating of any judgment or decree of this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case."

4. That although the United States of America and the Interstate Commerce Commission were parties to said action, and that although under Rule 57, subsection 5, it is provided that no costs shall be allowed "either for or against the United States or any officer or agency thereof * * * * * ", nevertheless such subsection under said rule does not apply to nor prohibit the taxing of costs against parties other than the United States, under subsection 2 of said rule, even though the United States or one of its agencies may also be a party to said action.

5. That the governing part of said Rule 57 is subsection 2 thereof and that under the provision thereof costs should be taxed against each and all of the appellees herein except the United States of America and the Interstate Commerce Commission.

6. That the costs in the above entitled action as furnished to appellants by the Clerk of said Court are as follows:

Clerk's costs	$ 794.28
Printing costs	3928.75
Total	$4723.03

7. This motion is made under the provisions of Rule 35 of the Rules of the Supreme Court of the United States.

For the reasons and upon the grounds hereinabove set forth, appellants move the court for an Order taxing costs in the amount of $4723.03 against each of the appellees above named except the United States of America and the Interstate Commerce Commission.

Respectfully submitted,

CALVIN L. RAMPTON

Counsel of Record for Appellants

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PROOF OF SERVICE

I, CALVIN L. RAMPTON, counsel of record for appellants and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of August, 1958, I served, on behalf of the appellants herein, copies of the foregoing Motion to Tax Costs, as follows:

1. On the United States, by leaving a copy thereof at the office of A. Pratt Kesler, United States Attorney for the District of Utah, at Room 200, Federal Building, Salt Lake City, Utah, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C., and to Stanley N. Barnes, Assistant Attorney General, Department of Justice, Washington, D.C.

2 On the Interstate Commerce Commission, by mailing

a copy in an addressed envelope, with air mail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and Charles H. Johnson, Assistant Counsel, at the offices of the Commission, Washington 25, D.C.

3. On the intervening defendants by mailing copies in addressed envelopes, with first class postage prepaid, to their respective counsel of record as follows:

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Counsel of Record for Appellants